IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/03/2004

CORAM

THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

SECOND APPEAL NO.1249 OF 1993

Sri-La-Sri Shanmugha Desika
Gnanasambanda Paramacharya
Swamygal Avargal,
Dharma Adheenam,
Dharmapuram .. Appellant

-Vs-

N. Rangasamy .. Respondent

This second appeal is preferred under Section 100 of CPC against the order and judgment dated 30.4.1993 in AS No.155 of 1992 on the file of the learned II Additional Subordinate Judge, Coimbatore confirming the decreetal order made in OS No.2346 of 1984 dated 23.10.1991 on the file of the learned III Additional District Munsif, Coimbatore.

!For Appellant : Mr.B.Chandrasekaran

^For Respondent : Mr.K. Mohanram

:JUDGMENT

Aggrieved over the dismissal of a suit for recovery of possession by both the courts below, the plaintiff has brought forth this second appeal.
2. The following averments are noticed in the pleadings of the parties:
The immovable property described in the schedule to the plaint belonged to Dharmapuram Adheenam Mutt, wherein "Othuvar" is permitted to do "Parayanam" and it was all along used to divine and religious purpose and was also giving training to Othuvars. In order to maintain the same, caretakers were appointed. In that way, one Subbathal and Narayanasamy Naidu were appointed as caretakers. They were carrying on duties properly at the beginning and they continued to be in possession of the property. Subsequently, they did not do their duties, for which they were appointed. On the death of the said Narayanasamy Naidu, the defendant, his son continued to occupy the said property. He was raising objections then and there for carrying on day today activities of the Mutt, for which it was brought into

existence, and hence, there arose a necessity to file the suit for recovery of possession of the property from him.

3. The suit was resisted by the defendant stating that the suit property never belonged to Mutt, much less to Dharmapuram Adheenam; that his father deceased Narayanasamy Naidu was the absolute and exclusive owner of the suit property; that pursuant to the Will executed by him on 28.2.1978, this defendant got possession of the property and from that time onwards, he has been in exclusive possession and enjoyment of the same, exercising all rights of ownership over the same; that the plaintiff has suppressed the earlier suit filed by Saiva Perumakkal Peravai, a society and its office bearers, in respect of the suit property in OS Nos.614 and 779 of 1966 on the file of the District Munsif, Coimbatore against the said Narayanasamy Naidy and Subbathal for declaration of the alleged title and possession; that on contest by the said Narayanasamy Naidu, the suit was dismissed on 16.8.1968 and even AS No.134 of 1970, which arose therefrom was also dismissed by the Subordinate Court, and thus, the property did not belong to the Mutt, but it belongs to the defendant exclusively, and hence, the suit was to be dismissed.

4. Necessary issues were framed by the trial court. On trial, the suit was dismissed. The appeal by the plaintiff was also dismissed by the first appellate court. Hence, this second appeal has been brought forth by the plaintiff.

5. At the time of admission, the following substantial question of law was formulated by this Court for consideration:

"Are the Courts below, after having concurrently held in favour of the plaintiff that it alone has the title, right in dismissing the suit on the ground that the property would come under any of the Abolition Act, which would be a bar to the Civil court granting a decree for possession when there is no such plea in the written statement and no issue framed and no evidence let in by the defendant?

6. This Court paid its full attention on the submissions made by the learned counsel for the appellant and also the respondent.

7. After careful consideration of the rival submissions and the scrutiny of the materials available, this Court is of the considered opinion that the judgment of the both the courts below have got to be set aside and decree has got to be granted in favour of the plaintiff, as asked for.

8. The suit has been filed by the plaintiff, who is shown as Sri-La-Sri Shanmugha Desika Gnanasambanda Paramacharya Swamygal Avargal, Dharma Adheenam, Dharmapuram. A reading of the plaint would clearly indicate that the suit property belonged to Dharmapuram Adheenam Mutt and nowhere it is claimed that the property in respect of which the relief is sought for was that of Gurumaha Sannidhanam, who has brought the plaint before the court. The plaintiff sought the relief specifically stating that the suit property belonged to the Mutt, which has been maintained for the purpose of development and improvement of Tamil Vedic and it has been maintained for the said purpose, all along. The caretakers were appointed then and there to carry out the day today affairs, which is being done and in that way Narayanasamy Naidu and Subbathal were appointed. At the initial stage, they were doing their work properly, and subsequently, laches were found. On the death of Narayanasamy Naidu, his son, the present defendant continued to occupy the property, illegally, and hence, he was to be evicted.

9. What was all contended by the defendant before the courts below

was that the suit property never belonged to the Mutt, but it belonged to his father Narayanasamy Naidu, who executed a Will in his favour on 28.2.1978. On his death, the Will came into force and he got the property and has been in enjoyment of the same in his own right, and hence, the suit was to be dismissed. In order to get support for the contention, the defendant relied on the judgment rendered by the District Munsif in OS Nos.614 and 779 of 1966, which were filed by Saiva Perumakkal Peravai, a society and its office bearers, and on that dismissal, an appeal filed by the plaintiff was also dismissed. This Court is of the considered opinion that the defendant cannot avail the defence plea either prosecuted or strengthened by the judgment rendered therein for the simple reason that the plaintiff herein was not the plaintiff therein, but one Saiva Perumakkal Peravai. A perusal of the written statement filed by the said Narayanasamy Naidu and Subbathal in those proceedings, as could be seen from the judgment rendered therein, would clearly indicate that they have made a candid admission that the suit property belonged to the Mutt and it did not belong to the plaintiff therein, and thus, it would be clear that the ownership of the property, in question, was with Dharmapuram Adheenam Mutt was the fact admitted by the father of the defendant in the earlier proceedings.

10. It is pertinent to point out that both the courts below have found that the property belonged to the Mutt and the said finding has not been challenged by the respondent herein. Though both the courts below have concurrently found that the plaintiff alone had title to the property, have negatived the relief by dismissing the suit only on the ground that the property would come under the Abolition Act, and hence, there was a bar to the Civil court to grant a decree for possession. It is a matter of surprise to note that no such plea was taken by the defendant in the written statement, but there was a denial of title of the plaintiff and he has also set up the title on himself. While both the courts below held that the property belonged to the Mutt, it naturally follows that the claim of the defendant was negatived by both the courts below.

11. The specific case of the plaintiff was that the defendant's father Narayanasamy Naidu was put in possession of the property as caretaker and in that regard, evidence was adduced and the defendant was continuing to occupy the same as an encroacher. But the defendant has claimed title pursuant to the Will executed by his father Narayanasamy Naidu in his favour. But, the said Narayanasamy Naidu has recognized and admitted the ownership of the Mutt in the earlier proceedings, and thus, his possession in the property was only on permission. Since the defendant has claimed the property through his father, who has clearly admitted the ownership of the Mutt and he was in possession on permission, now the defendant would be prevented from taking such a plea that the property belonged to him. Under the stated circumstances, the defendant has not raised the plea in the written statement that under the Abolition Act, the ownership of the plaintiff has become extinguished. Both the courts below have taken the same stand even without any plea and have denied the relief. Hence, under the stated circumstances, such a stand has got to be set aside without any hesitation, whatsoever. This Court is unable to notice any factual or legal impediment for granting the relief of recovery of possession in favour of the plaintiff, as asked for.

12. The judgment of both the courts below are set aside. The suit is decreed. The defendant is directed to hand over the possession of the

property to the plaintiff within a period of two months from the date of receipt of copy of this judgment. This second appeal is allowed, leaving the parties to bear their costs.

Index : Yes
Internet : Yes

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To
1. II Addl. Subordinate Judge, Coimbatore
2. The III Addl. District Munsif, Coimbatore
3. The Record Keeper, VR Section,
High Court, Madras